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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

GLENN H. SONSTENG, Personal)	Civil No. 3:06-CV-476-SU
Representative of the Estate of)	
EDNA M. SONSTENG, Deceased,)	
)	
Plaintiff,)	
)	
v.)	DEFENDANT SPOKAS' MOTION
)	TO DISMISS AND OR STRIKE
THE DOMINICAN SISTERS OF)	(Pursuant to Fed. R. Civ. P.
ONTARIO, INC., an Oregon)	12(b)(6) and 12(f))
non-profit corporation, dba HOLY)	
ROSARY MEDICAL CENTER;)	
JOSEPH J. BOYLE, M.D., and)	REQUEST FOR ORAL
FRANK J. SPOKAS, M.D.,)	ARGUMENT
)	
Defendants.)	

Timothy O'Hanlon, attorney for Defendant Spokas, made a good faith effort through telephone conference with plaintiff's attorney to resolve the

dispute that is the subject of this motion. The parties have been unable to resolve the dispute.

Defendant Spokas moves pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss plaintiff's survival action. Because plaintiff alleges defendants' negligence caused her death, plaintiff's only action is under Oregon's wrongful death statute, ORS 30.020.

Defendant Spokas moves for an order striking plaintiff's paragraph 8 allegation of damages in excess of the statutory cap applicable to wrongful death actions. Fed. R. Civ. P. 12(b)(f).

Defendant additionally moves pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss plaintiff's Count II allegations, paragraphs 10 and 11. Count II alleges a continuing tort, presumably for the purpose of extending the applicable statute of limitations. Under Oregon law, there is no continuing tort basis for extending the statute of limitations. The allegations fail to state a claim.

DATED this 2nd day of October, 2006.

MAUTZ BAUM & O'HANLON, LLP

By: /s/ Timothy J. O'Hanlon
Timothy J. O'Hanlon
OSB No. 87309
Attorneys for Defendant
Frank J. Spokas, M.D.
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**RE: SONSTENG v. THE DOMINICAN SISTERS OF ONTARIO, INC.,
SPOKAS, ET AL**
CASE NO.: 3:06-CV-476-SU
DOCUMENT: DEFENDANT SPOKAS' MOTION TO DISMISS AND OR STRIKE
(Fed R. Civ. P. 12(b)(6) and 12(f))

CERTIFICATE - TRUE COPY

I HEREBY CERTIFY that the foregoing copy of the above-named document(s) is a complete and exact copy of the original.

MAUTZ BAUM & O'HANLON, LLP
Attorneys for Defendant Spokas

By: _____
Timothy J. O'Hanlon

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CERTIFICATE(S) OF SERVICE

Electronic Filing/Mailing:

I HEREBY CERTIFY that I served the above-named document(s) on the following by electronic filing and by mailing a **TRUE COPY** thereof, certified by me as such, contained in a sealed envelope with postage fully prepaid, addressed to the last known address and deposited in the post office at Pendleton, Oregon, on October 2, 2006:

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By: /s/ Timothy J. O'Hanlon
Timothy J. O'Hanlon

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(Pursuant to Fed. R. Civ. P. 12(b)(6) and 12(f))

(Case No. 3:06CV-476-SU)